87 1900

Supreme Court, U.S.
FILED
MAY 17 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

TERESA FEDERICO, DORIS T. FEDERICO
DOMENICO FEDERICO,
Petitioners,

VS.

JAMES P. LINGL; OF AN INDIVIDUAL,
TAYLOR, CHURCHMAN, & LINGL; TAYLOR,
CHURCHMAN, LINGL, & LIEBMANN,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
COURT OF APPEALS 2ND DISTRICT
DIVISION 6 OF CALIFORNIA

TERESA FEDERICO
DORIS T. FEDERICO
DOMENICO FEDERICO
Petitioners in Pro Per
1656 Riente Street
Camarillo, California 93010
805-482-6644

QUESTIONS PRESENTED FOR REVIEW

1. Were Petitioners/Plaintiffs both Constitutional and Judicial rights violated when Judge of District Court would not let them be heard in a Court of Law?

2. Were Petitioners/Plaintiffs both Constitutional and Judicial rights violated when Judge of District Court and Court of Appeals were the Prosecutors rather than Trialor of Fact?

3. Whether the summonses needed in a mandatory fashion the inked seal and inked signature of an exployee clerk instead of the printed name of the official appointed head clerk of courts?

4. Whether the untimely answers of the Respondents/Defendants and their asking relief made them a general appearance not special appearance?

5. Whether the decision forces Petitioners/Plaintiffs to end their case depriving them their day in court, no plain, adequate and speedy remedy at law; to produce evidence; causing

serious and irreparable harm to Petitioners the just interpretation of truth of law; of oral argument; and their rights as a citizen of the United States?

6. Whether Jurisdiction was on to the Defendants by summons and answering and start of the case?

7. Whether the Defendants were served in a individual or business capacity?

8. Whether two Defendants received summons in an approved manner?

9. Whether a Defendant untimely answered should be struck and a default entered and to be heard?

10. Whether the Court of Appeal opinion was bias, prosecution orientated, and in error?

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED FOR REVIEW.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINION BELOW.....	2
JURISDICTION.....	3
CONSTITUTIONAL PROVISIONS.....	4
STATEMENT OF THE CASE.....	6
STATEMENT OF THE FACTS.....	9
REASONS FOR GRANTING THE WRIT.....	13
CONCLUSION.....	31
AFFIDAVIT OF SERVICE.....	33
APPENDIX I.....	AI

Court of Appeals Opinion Second Appellate District Division Six Filed on December 3, 1987, 9pages.

APPENDIX II.....	AII

Supreme Court Of The State California Order Denying Review Filed on February 17, 1988, 1 page.

TABLE OF AUTHORITIES

	PAGE
ALLEN V. SUPERIOR COURT (1953)..... 41 C2d 306, 259 P2d 905	19
B. OF A. V. HARRAH (1952)..... 248, P2d 814, 113 CA 2d 639	15
CORY V. CROCKER BANK (1981)..... 123 CAL App 3d 655	12-20
CLARK V. PALMER (1891)..... 90 Ca 504, 506 27P375	14
DEBRINCAT V. SWART (1934)..... 36 P2d 247 1Ca 2d 756	17
FITZGERALD V. TERMINAL (1936)..... 53 p 2d 177, 11 Ca 2d 126	17
KRAMER V. SCIENTIFIC (1973)..... 365 F Supp 780	14
LIGARE V. CALIF. SOUTHERN (1888)..... 76 Cal 610	12-13-30
MILLSTEIN V. OGDEN (1948)..... 190 P2d 312, 84 Ca2d 229	16
MILLIKEN V. MEYER (1940)..... 311 US 457	19
MURPHY V. TRAVELERS (1933)..... 534 F 2d 1155	19
NELLIS V. JUSTICES CT. (1912)..... 129 P 472, 20 Ca 394	16
ODEN V. MCCRANEY (1938)..... 235 Ala 363 179 So 191	20
SOUTHERN COTTON V. HEWLETT (1917)..... 107 SC 532	12-14
SCHERING CORP V. SUPERIOR (1975)..... 52 Ca 3d 737 125 Cal Rptr. 337	27

PAGE

PEOPLE V. CARLUCCI (1979)..... 28
23 CA 3d 249m 152 CalR 439

TUOLUMNE V. PATTERSON (1981)..... 25
18 C 415

UNITED FOOD V. ALPHABETA (1950)..... 19
736 F 2d 1371

CONSTITUTION--UNITED STATES & CALIFORNIA

U. S. CONSTITUTION AMEMDMENT I..... 4

U. S. CONSTITUTION ART.VI SEC 2..... 4

U. S. CONSTITUTION AMENDMENT XVI..... 4

U. S. CONSTITUTION AMENDMENT V..... 5

CALIFORNIA CONSTITUTION ART I SEC I5..... 5

CALIFORNIA CONSTITUTION ART I SEC I6..... 5

RULES OF COURT

CCP RULE 17..... 12-13

CCP RULE 585..... 25

CCP RULE 410.50..... 17

CCP RULE 412.20..... 26

CCP RULE 412.30..... 20

CCP RULE 413.10 - 417.40..... 17-18

CCP RULE 418.10..... 9-10-11
18-26

CCP RULE 2015.5 & 1013a..... 24

37 ALR 87..... 12-13

172 ALR 521..... 19

28 U. S. C. 1254(1)..... 3

CEB C. C. PROC. BEFORE TRIAL V1 2.45..... 21

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

TERESA FEDERICO, DORIS T. FEDERICO, DOMENICO FEDERICO,

Petitioners,

VS.

JAMES P. LINGL; OF AN INDIVIDUAL, TAYLOR, CHURCHMAN, & LINGL; TAYLOR, CHURCHMAN, LINGL, & LIEBMANN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
COURT OF APPEALS 2ND DISTRICT
DIVISION 6 OF CALIFORNIA

The petitioners, Teresa Federico, Doris Federico, and, Domenico Federico respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on December 3, 1987.

OPINION BELOW

The OPINION of the Court Of Appeal Of The State Of California, Second Appellate District, Division Six on December 3, 1987 affirming the decision of the District Court has not been reported nor published (which should be); this said opinion appears in it's entirety hereto marked as APPENDIX I.

The ORDER denying Appellant's Petition For Review by the Supreme Court Of The State Of California on February 17, 1988 is hereto marked as APPENDIX II.

No opinion was signed nor filed by the District Court Judge to date.

JURISDICTION

The Judgment of the Court Of Appeal for the Second District, Division Six was entered on December 3, 1987. On January 12, 1988, Petitioners filed a PETITION FOR REVIEW in the Supreme Court Of The State Of California, and on February 17, 1988 order denying review stating only "Appellants' Petition For Review DENIED." giving no opinion. See Appendix I and II.

The Jurisdiction of this Court is invoked under 28 United States Code 1254(1).

CONSTITUTIONAL PROVISIONS

This case involves the DUE PROCESS clauses, RIGHT OF TRIAL BY JURY clauses, EQUAL PROTECTION OF THE LAWS clauses, the FREEDOM OF SPEECH AND PRESS clauses, the CITIZENSHIP PRIVILEGES clauses, JUDGES ARE BOUND BY CONSTITUTION clauses as follows:

U. S. CONSTITUTION, AMENDMENT I provides .....abridging the freedom of speech or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U. S. CONSTITUTION, ARTICLE VI, SECTION 2 provides laws of the United States which shall be made in pursuance thereof;..... shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State notwithstanding.

U. S. CONSTITUTION, AMENDMENT XIV provides .....no State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; not deny to any persons within its jurisdiction the equal protection of the laws.

CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 15 provides "Persons may not be deprive of life, liberty, or property without due process of law.

CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 16 provides "Trial by Jury is an inviolate right and shall be secured to all".

U. S. CONSTITUTION, AMENDMENT V provides that that Nor shall any person...be deprived of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

On May 27, 1983, Petitioners filed complaint for attorney malpractice.

On May 23, 1986, summons served on three Respondents and one away in Hawaii address unknown to family summons left with son.

On June 23, 1986, Lingl, Taylor, & Liebmann filed Notice Of Special Appearance And Motion To Quash Service (CCP418.10).

On June 27, 1986, Petitioners filed Request To Enter Default because Respondent Churchman did not file answer to summons.

On June 27, 1986, Respondent Churchman filed untimely Notice Of Special Appearance And Motion to Quash Service (CCP418.10). No proof of service attached nor exhibits.

On June 30, 1986, Respondent filed Notice Of Motion To Strike Defendants Churchmans Motion to Quash.

On July 3, 1986, Petitioners filed Ex Parte Motion To Shorten Time For Filing and Order.

On July 7, 1986, Petitioners filed Plaintiffs Response In Opposition To Each Defendants Notice Of Special Appearance And Motion To

Quash Service.

On July 9, 1986, Respondent Churchman filed Proof Of Service, untimely.

On July 10, 1986, Hearing in motion session of Superior Court. As per reporters transcript Judge did not according to law let Petitioners nor Respondents heard. Granted Motions To Quash and never heard nor ruled on Request To Enter Default.

On July 16, 1986, Respondent filed Notice Of Ruling with no Judges Order nor Opinion.

On July 22, 1986, Respondent filed Notice Of Ruling with no Judges Order nor Opinion.

On July 30, 1986, Respondent filed Notice Of Ruling with no Judges order nor Opinion.

On September 8, 1986, Petitioners filed timely Notice Of Appeal, Court Of Appeal Second Appellate District, Division Six.

On September 18, 1986, filed Notice to prepare Clerk's Transcript and Reporter's Transcript Of Oral Proceedings.

On April 21, 1987, Petitioners filed Request For Extension Of Time To File Appellants Opening Brief.

On June 17, 1987, Petitioners filed their Appellants Opening Brief.

On July 22, 1987, Respondents filed untimely Application And Order For Extension Of Time To Serve And File Brief.

Court Of Appeals gave them an unfair extension until August 22, 1987.

On August 25, 1987, Respondents, untimely, again filed their Respondent Briefs.

On previous dates all Respondents filed a Notice To Deliver Copy Of Record and I did send them to them at the same time I sent the Appellants Opening Brief, but, they failed to mail it back to me for my reply brief.

On September 8, 1987, Petitioners filed a Request For Extension Of Time To File The Appellants Reply Brief because Respondents would not give original papers back. Sent numerous letter to them to return papers.

Note: On August 25, 1987, Petitioners filed a Motion To Submit For Decision On The Record And On The Appellants Opening Brief Only Pursuant To Rule 17(b)seeing Respondents did not file briefs nor extensions timely.

STATEMENT OF THE FACTS

On May 27, 1983, Petitioners brought an action for professional negligence/malpractice against attorneys James P. Lingl; Of An Individual, Taylor, Churchman, & Lingl; Taylor, Churchman, Lingl, & Liebmann. Their two firms were dissolved and the four partners had split up and went their separate ways. Petitioners finally were able to locate all the four Respondents and on May 23, 1986 a Mrs. Eccles served them each with a summons. One Respondent was in Hawaii and when she went to his place of residents his elder son said his father was in Hawaii but could not be located and does not know an address for him. He said he would give him the summons when he gets back. This was declared under penalty of perjury by Mrs. Eccles in her Declaration Of Caroline A. Eccles that was attached to Plaintiff's Response In Opposition To The Defendant's Taylors Notice Of Special Appearance & Motion To Quash Service (CCP418.10).

Also, Liebmann disputed whether Eccles served him or another in his office, in Eccles

Declaration she stated "I went in and followed her into Mr. Liebmann office she(meaning secretary) then left. I asked the man sitting behind a desk are you William Q. Liebmann (the name on the top of the summons underlined) he said yes what can I do for you. I said I am Caroline Eccles and I am here to give you a summons and complaint and handed it across the desk to him". This was attached to Plaintiffs Response in Opposition to Liebmans Notice of Special Appearance & Motion To Quash Service (CCP418.10).

The summonses neither had a written signature of the Superior Court Clerk worker nor the inked seal of the court, but, it did have the printed name of "RICHARD D. DEAN" as the Clerk. The summons did contain the 30-day message stating "You have 30 calendar days after this summons is served on you to file a typewritten response at this Court. A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your

case. If you do not file your response on time you may lose the case, and your wages, money and property may be taken without further warning from the court. There are ofther legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office listed in the phone book."

On June 23, 1986, three Respondents, Lingl, Liebmann, & Taylor answered the summons with Notice Of Special Appearance & Motion To Quash Service (CCP418.10) on the 31st day to answer, untimely.

On June 27, 1986, one Respondent, Churchman, untimely filed his Notice Of Special Appearance I Motion To Quash Service (CCP418.10), 5 days after the 30 days to answer.

Petitioners responded to Churchman motion in writing and requested that Churchman's motion be struck as untimely, and Petitioners filed a Request To Enter Default on Churchman. This was never heard by the Judge of Superior Court.

On appeal Plaintiffs/Petitioners argued in their brief 1) the summonses were properly issued and served and defendants answered; 2) defendants said Special Appearance but asked relief so therefore made a general appearance instead; 3) Churchmans motion to quash was untimely; 4) seal and signature were not mandatory and cited cases and law to prove this; 5) Judge did not hear either as requested and permitted by judge earlier at beginning at motion session; 6) that summons "substantial compliance with the provisions necessary to render effective service and cited Cory v. Crocker Bk, 123 CAL APP 3D 655, plus, Southern Cotton Oil Co., V. Hewlett (1917) 107 SC 532, plus, Ligare V. California Southern R. (1888) 76 Cal 610, plus, CCP RULE 17 that states writing includes printing and typewriting, plus, 37 ALR87 states that printed signature compliance with the requirements, plus, Richard D. Dean printed signature makes the summons suthenticated; 7) did not receive a fair hearing.

REASONS FOR GRANTING THE WRIT

1-It's not mandatory to have summonses inked sealed and inked signature to validate them.

The summonses did not need the inked seal and signature of the employee clerk because it had the printed signature. According to CCP RULE 17 which states "writing includes printing and typewriting"and 37 ALR 87 states "stamped, printed, or typewritten signature as compliance with the requirement that process of document be under hand" Rule 17 also states the term signature includes name, mark, or sign written with intent to authenticate any instrument or writing and writing includes printing. The head appointed clerks name, RICHARD D. DEAN, Clerk OF COURTS was printed on a official Judicial Council of California form making it valid form. If his name was not printed on the form then one could argue on the validity.

In LIGARE V. CALIFORNIA SOUTHERN R CO. (1888) 76 Cal 610 18 Pac 777 states "The Courts seem to be generally in accord in holding that a printed or stamped signature of Judge or Court

Officer issuing an order or writ is a sufficient authentication fulfilling the requirement of a signature has in effect been adopted by the issuing officer".

In SOUTHERN COTTON OIL CO. V. HEWLETT (1917) 107 SC 532, 93 SE 195 states, "The Constitutional and Code Provisions requiring that writs and processes be attested by the clerks of the courts are not applicable to a summons, and as the code provision providing that an action may be commenced by summons does not require that such summons be signed or sealed by the clerk, such signature and seal are not necessary to it's validity".

In CLARK V. PALMER (1891) 90 CA 504-506 27 P 375 states, "CCP rule provides that the requirements are mandatory but the rule of LIBERAL construction is followed and minor variations of form are NOT FATAL."

In KRAMER V. SCIENTIFIC CONTROL CORP., D.C.PA. (1973) 365 F. Supp 780 states "Process was not defective because the summons served on defendant, being a photocopy, did not have

the seal of the court impressed on it".

Therefore, this Honorable Court should grant this Petition because, also, the seal and signature if only displays a character onto the summons and since the Defendants/ Respondents all of them answered untimely on the thirty-first day they waived any so call defect or admissions in the summons. They answered and the court has jurisdiction over them.

2-ALL DEFENDANTS ANSWERED,-SPECIALLY ANSWERED AND ASKED RELIEF-,MADE A GENERAL APPEARANCE

The Respondents/Defendants stated in their Motion to Quash that they are filing the motion in a special appearance manner, but, they did not stop there, because, they said "until such time as this defendant is properly and timely served with sufficient court process".

In BANK OF AMERICA NAT. TRUST & SAV. ASS'N V. HARRAH (1952) 248 P2d 814, 113 CA2d 639 states, "If a defendant by his appearance insists only upon objection that he is not in court for want of Jurisdiction over his person and confines his appearance for the purpose only he had made a special appearance but if he raises

any other question or ask any relief which can have jurisdiction of his person, he has made a general appearance."

In MILLSTEIN V. OGDEN (1948) 190 P 2d 312, 84 CA 2d 229 states, "A defendant desiring to stand on ground that Court is without jurisdiction over his person must specially appear for such purpose only and ask nothing further."

All defendants in their Motion To Quash stated that they join in the motion of each other. All asked relief, all made a general appearance. All knew they were being summoned. All answered in the time to answer summons, even they were one day late.

3-ALL DEFENDANTS OBTAINED JURISDICTION OF THEIR PERSON BY ANSWERING THE SUMMONS

All Defendants/Respondents answered the summons and by doing this they brought themselves in court under courts jurisdiction. In NELLIS V. JUSTICES COURT OF LA TP (1912) 129 P472, 20 CA 394 states, "A summons is the process whereby parties defendant are brought into court so as to give the court jurisdiction of their person."

In FITZGERALD V. TERMINAL DEVELOPMENT CO., (1936) 53 p2d 177, 11 CA 2d 126 states, "Court acquired JURISDICTION of party served with copy of summons and complaint".

In DEBRINCAT V. SWART (1934) 36 P2d 247 1 CA 2d 756 states, "JURISDICTION acquired by Court through service of summons and complaint in action related back to filing of complaint".

In CCP RULE 410.50 states, "It continues the governing the acquisition of Judicial Jurisdiction by a California Court and the continuation of such Jurisdiction throughout all subsequent proceedings which arise out of the original cause of action."

All the Respondents/Defendants appeared in court at their Motion To Quash hearing and in their motion they all admitted they got summons and all answered. The complaint was filed, action was commenced, they answered and the court acquired jurisdiction.

In CCP 413.10-417.40 stated in the CEB Procedures Before Trial book states, "failure to effect service as provided by these CCP rules is a jurisdictional defect that defendant

may rise by moving to quash service of summons under CCP 418.10...however, failure to effect proper service is not a jurisdictional defect when defendant has received actual notice of the litigation northwithstanding a technical defect in the manner of service.

The provisions of CCP 413.10-417.40 were intended by the legislature to be "LIBERALLY CONSTRUED to effectuate service and uphold the Jurisdiction of the court if actual notice has been received by the defendants." and all defendants have stated they received the summonses with the attached complaint, therefore, by the above mention citing the service was proper and valid, and, jurisdiction by the court was accomplised.

4-ONE DEFENDANT NAMED TAYLOR LEGALLY DID RECEIVE SERVICE AND JURISDICTION

Defendant Taylor states that he was out of town and that summons was left at his home to his son not to him in Hawaii, and, to this Petitioners/Plaintiffs state the following:

Leaving process or notice at resident as

compliance with requirement that party be served "Personally" or "In Person," Personally served," etc. 172 ALR 521, and, in MILLIKEN V. MEYER (1940) 311 US 457; ALLEN V. SUPERIOR COURT (1953) 41 C2d 306, 259 P2d 905.states, "California courts may exercise general jurisdiction over an individual domiciled in or a resident of California, even though that person is absent from the state when process is served."

Also, "a defendants answer and appearance in an action should be enough to prevent any technical error in form from invalidating process UNITED FOOD AND COMMERCIAL WORKERS UNION LOCALS 197, 373, 428, 588, 775, 839, 870, 1119, 1179 and 1532 BY UNITED FOOD & COMMERCIAL WORKERS INTERN. UNION AFL CIO VS. ALPHA BETA CO. 736 F 2d 1371.

And in MURPHY V. TRAVELERS INS. CO., 534 F2d 1155, states, "Voluntary appearance in action waived any potential defects founded on service or venue problems."

Defendant Taylor has already submitted himself to the jurisdiction of the court,

the court should of said he will not be heard to complain of such a defect.

Defendant Taylor stated that we served his son, therefore, in ODEN VS. MCCRANEY (1938) 235 ALA 363, 179 So 191, a contention by J. W. Oden that process had been served incorrectly upon his son, J.R. Oden, was held to be without merit because J. W. Oden had appeared and defended and submitted himself to the jurisdiction of the court. This is exactly what Taylor stated in his motion to quash.

5-THREE DEFENDANTS DID RECEIVE SUMMONS AS REPRESENTATIVE CAPACITIES AS MEMBERS OF A BUSINESS ORGANIZATION ALTHOUGH DISSOLVED AND AS AN INDIVIDUAL NAMED IN BUSINESS NAME

In the case of CORY V. CROCKER NATIONAL BANK 123 CAL APP 3d 665 177 CAL RPTR 150(1981) however stands for the principal that nothing more than substantial compliance with the provisions of CCP412.30 is necessary to render effective service. In CORY case, as in our case there was no marking on the summons to indicate whether the defendant was being served as "all that is required is substantial compliance

in order to render the service of the summons". In our case the defendants stated that the summons did not have a marking on the summons to indicate how they were being served, individual or on behalf of another, exactly same as the CORY case.

In CEB CALIFORNIA CIVIL PROCEDURES BEFORE TRIAL VOL 1 §2.45: The California Judicial Council has recognized the following bases that may be sufficient to give a court personal jurisdiction over an individual; (a) presence in the state; (b) domicile residence; (c) nationality or citizenship; (d) consent; (e) appearance in an action; (f) doing business in the state; (g) doing an act in the state; (h) doing an act elsewhere that causes an effect in the state; (i) ownership, use, or possession of a thing in the state. Therefore, the defendants and all four of them actually came under all of the above a to i and without a doubt received jurisdiction over individuals.

These four defendants has closed up business, dissolved partnership, and went on their separate ways as single person business.

The way we found them is by the other malpractice cases pending in court on them.

6-ONE DEFENDANT LIEBMANN STATED THAT HE WAS NOT SERVED BUT HIS PARTNER WAS SERVED

Even though defendant Liebmann included a Declaration of his and his secretary stating that the server served Dunlevy instead of him, but, the server who is an unbiases and unrelated to this case action did serve Liebmann and she too under oath of perjury stated she asked the man behind the desk if he was William Q. Liebmann and he responded yes. Here we are talking of a server that only has the authority to give it to Mr. Liebmann and her word against Liebmanns word. Lets weigh the possibilities, Liebmann is being sued again for Malpractice and trying to get out of being served would help him to bypass the suit and on the other hand we have the lady server who knows nothing about the case and its not against her and no money out of her pocket, she would not perjury herself. Then you have the long time secretary working over 15years for his firm before, she knows only to stick up for her boss through thick and thin

she knows about the several malpractice cases before this one and that are pending; she has alot going for her with everything to lose if she does not stick by her boss in anyway. Then you have the new partner who would be out money under the partnership malpractice insurance who has a lot to lose so he puts a declaration stating he got served instead of his partner so as to get it out of court. It's a good and well-rehearsed show with a great plot. Answering the summons in 31 days with Motion To Quash is a definite admitting that he received summons. What else is needed. It's proof.

The OPINION from the Court Of Appeals did admit that "Although a constitutional basis for personal jurisdiction exists and defendant's have received notice as required by due process".

7-DEFENDANT CHURCHMAN FILED MOTION TO QUASH UNTIMELY,DID NOT ANSWER SUMMONS, DID NOT APPEAR COURT FOR HIS MOTION TO QUASH AND DESERVED A REQUEST TO ENTER DEFAULT

On June 27, 1986, defendant Churchman

filed his Motion to Quash untimely, He also failed to file a proof of service with the document which violated CCP2015.5 and 1013a if by mail and if by person. Therefore, service was not completed and should not have been excepted nor filed by the clerk of courts if they were properly doing their work to notice if proof of service was attached. Since I noted it to him on July 9, 1986 he filed proof of service untimely. Also, defendant Churchman did not file an answer to Petitioners/Plaintiffs Notice Of Motion To Strike Defendant Churchmanns Motion To Quash but yet the court Judge errored and he deny Plaintiffs motion. This is unfair and unjust by the Judge. Motion to strike was denied, why where is he response, nowhere! I know Churchman is a local attorney and the judge was an attorney and possibly knows these defendants but what is right is right and what is wrong is wrong. The judge should give everyone equal protection of the law and not favorite lawyers over lay people. We are happy were in this U. S. Supreme court and take you as an unbias opinion (we hope). We can see favoritism

is bestowed to the four defendant attorneys but is not just nor fair. I study at the law library and I include all the proof of services with my documents, why can't he. The judge errored in not hearing the Plaintiff who was going to prove this proof of service error by churchman. The Plaintiffs motion to strike was not heard at all. The judge errored again. The motion to strike churchmans motion to strike should be allowed. He has no relief whatsoever once the 30 days expired and it was a gross miscarriage of justice allowing his motion to quash and denied plaintiffs motion to strike.

In CCP RULE 585, states, "Judgement may be had if the defendant fails to answer the complaint in the 30 days allowed by law. When defendants' failure to answer a complaint gives the plaintiff a right to a judgment. TUOLUMNE REDEMPTION CO., V. PATTERSON (1981) 18C 415.

On June 27, 1986, Plaintiff filed Request to Enter Default against Defendent Churchman because he failed to file answer in the required

30 days and we were never heard on the request to enter default.

In CCP418.10 states,"A defendant, on or before the last day of the time to plead or within such time as the court may for good cause sllow, may serve and file a notice of motion to Quash."

In CCP412.20 states, "A direction that the defendant file with the court a written pleading in response to the complaint within 30 days after summons is serve on him.

The summons served onto Churchman states. "You have 30 Calendar days after this summons is served on you to file a typewritten response at this court", and he did not do that.

8-JUDGE OF THE DISTRICT COURT WAS THE PROSECUTOR RATHER THAN THE UNBIAS TRIALOR OF FACT AND DID AND WOULD NOT LET EITHER PLAINTIFFS NOR DEFENDANTS BE HEARD IN A COURT OF LAW

The Judge, as per the court's transcript, would not let the Plaintiff/Petitioners nor the Defendants/Respondent talk. Only one Defendant Taylor said he had to go to another court

hearing and the Judge excused him and told all of us that he made his decision and leave he has others to hear. This is all documented in the courts transcript. The Judge made no written opinion not filed opinion to date. It was evident that the Judge was the prosecutor he made a decision without hearing. He had smiled and greeted the attorneys before hearing. The court balliff hugged each attorney since she has not seen them for sometime.

9-THE COURT OF APPEAL OPINION WAS BIAS, DISAGREED GIVING NO LAW, PROSECUTION ORIENTED, SAVING FACE OF DEFENDANTS

In their opinion they disagreed that the summons were not issued not citing any law nor rules, but, yet they stated in page 4 "Although a constitutional basis for personal jurisdiction exists and defendants have received notice as required by due process, service of process is ineffective unless statutory requirements for service are met". They dont even consider my CORY case nor any of the proven cases that we cited. They cite Schering Corp. V. Superior Court and this case proved they

served after the three vear. we served before the three years were up. Therefore this case does not apply to our case in hand. None of the defendants brought up the three year issue but the Court of Appeals went further and took it upon themself to state it. In PEOPLE V. CARLUCCI (1979) 23 Cal 3d 249, 152 Cal Reptr. 439 states, "If Judge was prosecution oriented...the Judge went too far and the conviction be reversed. In our case the Judge of the District Court and the Appeals Court Justices went too far and was prosecution oriented; Judge of District Court by taking Taylors misstatement only and denying all the Oppositions and allowing their motions without right to be heard, and, by the Court Of Appeals Justices by feeding opinion with their own verson of the service putting their own words and not using the insufficient words of the defendants briefs. It sounds as you read it that the Court of Appeals is the defendant.

The Court of Appeal opinion tries to mix-up your Honorable Court by stating on

on page 7 of their opinion that "Defendants requested that the summonses be declared ineffective and quashed. This request for "relief" does not constitute a general appearance", which is incorrect on Courts part. because the defendants and all of them stated "Until such time as this defendant is properly and timely served with sufficient court process". This is asking relief, this is not just objecting as it calls for only. It looks as if the Court of Appeals is trying to save face of the four defendants (who just so happens to be attorneys that went before they dissolved and split up to Court Of Appeals and probably are still going before that court as single business attorneys. This is unfair and unjust and a abridge of the Petitioners Constitutional and Judicial rights.

Another saving face of the defendants that the Petitioners/Plaintiffs are suing for malpractice by the Court of Appeals on the bottom of the Opinion it states "Not to be published". We guess they are not proud of the defendants wrong doing and dont want anyother person to hear or read about it, and, also if anyone

read their opinion you can see the stmosphere of the helping the defendants and against the plaintiffs that the Court of Appeals is projecting. The Plaintiffs/ Respondents just want Justice done right and fair as 3 pro per against 4 pro per a.id not any special treatment because they are attorneys and were not. Our issues, law, and rules should stand in front and nothing else, and, both sides issues, fair and just. Rather go into the opinion in length I know when this Honorable Court read it they can understand what I am saying.

On page 5 of the Opinion regarding Ligare V. California S.R.R.Co. in this case they consider the seal and signature as a character of the summons not a mandatory appearance. Character is not a law or rule binding. This case helps the Petitioners and as you'll notice we cite it in previous pages also.

CONCLUSION

Petitioners, Teresa Federico, Doris T. Federico, and, Domenico Federico respectfully request this Honorable Court find that Petitioners have proven their burden of establishing special and important reasons by a writ of certiorari should be granted.

Petitioners respectfully request that this Honorable Court issue a writ of certiorari and reverse the decision and remand the case to the district court.

Petitioners know the pressures on this Honorable Court have been growing rapidly. Every expansion of the scope of a federal statue inevitably impacts on the workload of this Court's time, a high priority should be given to the shaping and limiting of the scope of rules and statues and laws. That is particularly true with opinion and decisions in this matter. This petition for certiorari should be granted.

Petitioners respectfully request this

Honorable Court to return us all back to District Court so as to have our day in court, right for due process of law, and, their Constitutional and Judicial and Civil rights to a trial.

DATED: May 17, 1988.

RESPECTFULLY SUBMITTED
BY,

TERESA FEDERICO

DORIS T. FEDERICO

DOMENICO FEDERICO

1656 RIENTE STREET
CAMARILLO, CALIFORNIA 93010
In Pro Persona

AFFIDAVIT OF SERVICE

I, DORIS T. FEDERICO, do hereby certify that I forwarded three (3) copies of the APPELLANT'S PETITION FOR WRIT OF CERTIORARI pursuant to United States Supreme Court Rule 28 in a sealed envelope, first-class postage prepaid, certified mail-return receipt requested to each of the Respondents/Defendants as named James P. Lingl, 400 Rosewood Avenue, Camarillo, California 93010; Glenn E. Churchman, 340 Rosewood Avenue, Camarillo, California 93010; William Q. Liebmann, 266 Mobil Avenue, Camarillo, California 93010; and, George E. Taylor, 360 Mobil Avenue, Camarillo, California 93010 on Tuesday, May 17, 1988 depositing the same in the United States Post Office mail in Oxnard, California.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: May 17, 1988.

Doris T. Federico
DORIS T. FEDERICO

See inback
NOTARY PUBLIC

STATE OF CALIFORNIA
COUNTY OF Ventura } ss.

On May 17 1995 before me, the undersigned, a Notary Public in and for said State, personally appeared Doris T. Federici

_____ . ~~personally known to me~~ or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the ~~within instrument~~ and acknowledged that She executed the same.

WITNESS my hand and official seal.

Signature _____

OFFICIAL SEAL
SUSAN WORSHAM
NOTARY PUBLIC - CALIFORNIA
VENTURA COUNTY
My Comm. Expires Jan. 7, 1997

(This area for official notarial seal)

STAPLE HERE

37-1

BEST AVAILABLE COPY

APPENDIX I

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

DORIS T. FEDERICO, et al., Plaintiffs and Appellants, v. JAMES P. LINGL, etc., et al., Defendants and Respondents.	2d Civil NO.B022996 (Super.Ct.No.80057) (Ventura County)

COURT OF APPEAL-SECOND DIST.
F I L E D
DEC 3-1987

Plaintiffs Doris, Teresa and Domenico Federico appeal the order of the trial court quashing service of summons upon defendants. We affirm and hold that statutory requirements for service of summons must be observed to confer personal jurisdiction over defendants. (Schering Corp. v. Superior Court (1975) 52 Cal.App.3d 737, 741.)

FACTS

On May 27, 1983, plaintiffs brought this action for professional negligence against attorneys James P. Lingl; Taylor, Churchman & Lingl; and Taylor, Churchman,

Lingl & Liebmann. Plaintiffs sued Lingl as an individual and each of the two associations of attorneys as "a business organization, form unknown."

Four days before the three-year period to serve the summons and complaint upon defendants expired (Code Civ. Proc., § 583.210[1/]), plaintiffs attempted to serve defendants. Caroline Eccles, not a party, personally served defendants James P. Lingl and Glenn E Churchman. Since defendant George E. Taylor was in Hawaii, Eccles served his son Jordan. Plaintiffs and defendant William Q. Liebmann dispute whether Eccles served Liebmann personally or served h is associate, William Dunlevy.

The summons evidenced neither the signature of the superior court clerk nor the seal of the court. Further, the summons declared that each defendant was served "as an individual defendant." In addition, defendant Taylor did not receive a copy of the summons and complaint by mail, as required by section 415.20, after Eccles served those documents upon his son.

1/ All statutory references are to the California Code of Civil Procedure.

Individually, defendants moved to quash service of summons because plaintiffs failed to comply with statutory requirements of issuance and service. Defendants Lingl, Taylor, and Liebmann filed motions to quash before expiration of the 30-day period to answer the complaint; defendant Churchman filed his motion 4 days after expiration of the 30-day period. Plaintiffs responded to the motions in writing and requested that Churchman's motion be struck as untimely. After consideration of written and oral argument, the trial judge denied plaintiffs' motion to strike and quashed service of the summonses.

On appeal plaintiffs argue that 1) the summonses were properly issued and served; 2) they did not receive a fair hearing; 3) defendants entered a general appearance in the action by requesting relief from the trial court; and 4) Churchman's motion to quash was untimely.

DISCUSSION

Plaintiffs contend that the summonses were properly issued and served because they bore the printed or typewritten name of "RICHARD D. DEAN," the clerk, and

because defendants received actual notice of the action despite technical defects in the summonses and their service. We disagree; the summonses were not "issued" by the superior court and did not notify three defendants of suit against them in their representative capacity. Moreover, plaintiffs did not properly serve Taylor since they failed to mail him a copy of the summons and complaint as required by section 415.20.

Although a constitutional basis for personal jurisdiction exists and defendants have received notice as required by due process, service of process is ineffective unless statutory requirements for service are met. (Schering Corp. v. Superior Court, supra, 52 Cal.App.3d 737, 741.) Actual notice of the litigation does not confer personal jurisdiction absent substantial compliance with these statutory requirements. (MJS Enterprises, Inc. v. Superior Court (1984) 153 Cal.App.3d 555, 557.) Service of process, as prescribed by law, enables a court to acquire personal jurisdiction over defendant in a civil action. (Ibid.)

Section 412.10 entitles a plaintiff to request the court clerk to "issue one or more summons" after

payment of applicable fees. Section 412.20 requires that a summons be "signed by the clerk and issued under the seal of the court in which the action is pending . . . ." Section 153, subdividion (2) also requires that a seal be affixed to a summons. A seal may be effected by an impression, the work "seal" or by the initials "L.S." (See code commissioners' notes to §§ 14, West's Ann Code Civ. Proc. (1982) p. 40.) The objective of a seal is to give character to a document, and the affixing of a seal signifies the adoption of a printed signature. (Ligare v. California S. R. R. Co. (1888) 76 Cal 610, 611.) Since the summons here evidenced neither a court seal not the signature of the court clerk, they lacked official character and were ineffective to establish personal jurisdiction over defendants.

Moreover, the summonses failed to alert three defendants of suit in their representative capacities as members of a business organization. It is well settled that if a summons and complanit designates a defendant in his representative capacity, he should be so served. (Bank of America v. Carr (1956) 138 Cal.App.2d 727

736.) Section 412.30 provides in part that "[i]n an action against a corporation or an unincorporated association (including a partnership), the copy of the summons that is served shall contain a notice stating in substance: 'To the person served: You are hereby served in the within action . . . on behalf of (here state the name of the corporation or the unincorporated association) . . . . [ ] If such notice does not appear on the copy of the summons served, no default may be taken against such corporation or unincorporated association or against such person individually, as the case may be." The requirements of section 412.30 are mandatory; service that fails to substantially comply with the section is ineffective. (Mannesmann DeMag, Ltd. v. Superior Court (1985) 172 Cal.App.3d 1118, 1123; Schering Corp. v. Superior Court, Supra, 52 Cal.App.3d 737, 741.) We think there was no substantial compliance here since the summonses disclosed that the three defendants were sued individually and not on behalf of a business entity. Although plaintiffs attempt to remedy this situation by claiming in their reply brief that defendants had dissolved their law partnership, this

fact is outside the record upon appeal. Accordingly, we do not consider it.

Defendant Taylor[2/] declared that he did not receive a copy by mail of the summons and complaint served upon his son. Section 415.20 requires such mailing by first class mail. Service of summons is deemed complete upon the tenth day after mailing.

Plaintiffs' remaining contentions lack merit. They filed a written response to the defendants' motions and appeared at the hearing. Although not given precisely 15 minutes to speak, they were offered the opportunity to argue. Defendants requested that the summonses be declared ineffective and quashed. This request for "relief" does not constitute a general appearance. (Bank of America v. Carr, supra, 138 Cal.App.2d 727, 733.) Moreover, the trial judge acted within his discretion in permitting Churchman's motion four days after the thirty-day period expired. The

---

2/ Defendant Liebmann did not declare whether he received a copy of the summons and complaint by mail after Eccles effected service upon his associate, William Dunlevy.

court Clerk had not yet entered Churchman's default, and section 418.10 permits a defendant to file a motion to quash "on or before the last day of his time to plead or whithin such further time as the court may for good cause allow . . . ."

Accordingly, the judgment is affirmed. The Federicos are to bear the costs of appeal.

NOT TO BE PUBLISHED.

GILBERT, J.

We concur:

STONE, P.J.

ABBE, J.

Allan L. Steele, Judge

Superior Court County of Ventura

Doris T. Federico, Teresa Federico, Domenico Federico, in pro. per., for Plaintiffs and Appellants.

William Q. Liebmann, in pro. per., for Defendant and Respondent.

George E. Taylor, in pro. per., for Defendant and Respondent.

Glenn E. Churchman, in pro. per., for Defendant and Respondent.

James P. Lingl, in pro. per., for Defendant and Respondent.

APPENDIX II

O R D E R D E N Y I N G R E V I E W
AFTER JUDGMENT BY THE COURT OF APPEAL
2ND DISTRICT, DIVISION 6 NO. B022996
S003815

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

I N B A N K

FEDERICO ET AL.

v.

LINGL etc., et al.

Appellants' petition for review DENIED.

F I L E D
Feb 17 1988
Laurence P. Gill,Clerk

LUCAS
Chief Justice